

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS - EASTERN DIVISION**

IN RE:

NELSON PIERRE AND  
SORNA PIERRE, A/K/A  
SORNA SIMON,  
Debtors

Case No. 11-19304 - FJB  
Chapter 7

**MOTION OF WELLS FARGO BANK, N.A.  
FOR RELIEF FROM THE AUTOMATIC STAY**

Now comes Wells Fargo Bank, N.A., formerly known as Wachovia Mortgage, FSB, f/k/a World Savings Bank, FSB (the “Lender”) and moves for relief from the automatic stay existing pursuant to 11 U.S.C. § 362 to permit the Lender and/or its successors and/or assigns to exercise its rights under its loan documents, including the power of sale contained in the mortgage dated June 27, 2005, and recorded with the Middlesex County (South District) Registry of Deeds, in Book 45492 at Page 318, and to exercise its possessory rights should the Lender and/or its successors and/or assigns become the successful purchaser at foreclosure, with respect to the real estate and improvements owned by Nelson Pierre and Sorna Pierre, a/k/a Sorna Simon (the “Debtors”), and located at 105-107 Lawrence Street, Malden, Massachusetts.

In support thereof, the Lender states as follows:

1. The Lender is a lending organization with a place of business located at 4101 Wiseman Boulevard, San Antonio, TX 78251.
2. Counsel to the Lender, Partridge Snow & Hahn LLP, collects debts for mortgage lenders and any information obtained in that regard will be used for that purpose.
3. Upon information and belief, the Debtors are residents of Malden, MA.

The above case was commenced on September 30, 2011, by the filing of a petition for relief pursuant to Chapter 7 of Title 11 of the United States Code.

4. The Debtors are the owners of that certain real estate and improvements located at 105-107 Lawrence Street, Malden, Massachusetts (the "Premises").

5. On June 27, 2005, the Debtors executed a promissory note in favor of the Lender having an original principal balance of \$382,500.00 (the "Note"). A true and accurate copy of the Note is attached hereto as Exhibit A.

6. On June 27, 2005, as security for payment of the Note, the Debtors granted a mortgage (the "Mortgage") to the Lender on the Premises. The Mortgage was recorded with the Middlesex County (South District) Registry of Deeds, in Book 45492 at Page 318. The Lender has no other collateral for the Note. A true and accurate copy of the Mortgage is attached hereto as Exhibit B.

7. The Note and the Mortgage are now and continually have been in default since April 15, 2009, due to the failure of the Debtors to make payments thereunder.

8. The total amount in arrears on this loan as of October 11, 2011, is \$81,157.64 which is broken down as follows:

|   |             |
|---|-------------|
| 6 payments of \$2,397.00 each<br>(4/15/09 - 9/15/09)    | \$14,382.00 |
| 10/15/09 payment  | \$ 2,306.33 |
| 12 payments of \$2,438.54 each<br>(11/15/09 - 10/15/10) | \$29,262.48 |
| 11 payments of \$2,580.63 each<br>(11/15/10 -9/15/11)   | \$28,386.93 |
| Late charges  | \$ 1,383.23 |
| NSF Fees  | \$ 15.00    |
| FC Legal fees and costs                                 | \$ 4,721.64 |
| Legal fees and costs for this motion for relief         | \$ 700.00   |
| Total:  | \$81,157.64 |

9. As of October 5, 2011, there was due and owing pursuant to the Note, together with interest, expenses and reasonable attorneys' fees, the amount of \$504,520.39.

10. The amount of the current monthly payment owed to the Lender is \$2,580.63.
11. In addition to the Mortgage, there are additional liens and encumbrances on the Premises as set forth below:
- Second mortgage to World Savings Bank, now Wells Fargo Bank, N.A. dated June 27, 2005 in the original amount of \$76,500.00, and recorded in Book 45492, Book 337. The payoff on this mortgage as of October 5, 2011 was \$88,094.63.
12. The total of all liens and encumbrances on the Premises is approximately \$592,615.02.
13. The Premises is valued as follows:
- |   |              |
|---|--------------|
| (1) Fair Market Value (Debtors' Schedules)  | \$331,000.00 |
| (2) Liquidation Value*:   | \$309,130.64 |
| *Liquidation Value arrived at by taking Fair Market Value of \$331,000.00, less usual and customary 6% broker's commission of \$19,860.00, less documentary deed stamps calculated at \$4.56 per thousand (\$1,509.36), less closing costs of \$500.00 for a Liquidation Value of \$309,130.64. |              |
14. There is no other collateral securing the Note.
15. The Debtors have indicated in their Statement of Intention that they intend to surrender the Premises.
16. The Lender is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362 (d)(1) for cause, to wit, the lack of adequate protection, for the failure of the Debtors to make payments to the Lender pursuant to the terms of the Note and the Mortgage, and pursuant to 11 U.S.C. § 362 (d)(2)(A) because there is no equity in the Premises for the Debtors'

estate, and the Premises are not necessary to an effective reorganization, as this is a Chapter 7 liquidation.

17. The Lender will be irreparably harmed unless it is granted relief from the automatic stay.

WHEREFORE, the Lender prays that the automatic stay existing pursuant to 11 U.S.C. § 362 be modified to permit the Lender and/or its successors and/or assigns to exercise its rights pursuant to the Note and the Mortgage, including the power of sale with respect to the Premises; and that the Lender and/or its successors and/or assigns have such other and further relief as is just, including relief to exercise its summary process rights against the Premises should the Lender and/or its successors and/or assigns be the successful bidder at foreclosure.

WELLS FARGO BANK, N.A.

By its Attorneys,

PARTRIDGE SNOW & HAHN LLP

/s/ Ann Marie Maccarone

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Dated: October 12, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of October, 2011, I electronically filed a Motion for Relief from the Automatic Stay with the Clerk of the Bankruptcy Court using the CM/ECF System. The following participants have received notice electronically:

John Fitzgerald, Esquire, U.S. Trustee  
Gary W. Cruickshank, Esquire, Trustee  
Martin B. Dropkin, Esquire, Counsel for Debtor

and I hereby certify that a copy of the Motion for Relief from the Automatic Stay was served by regular, first class mail, to the following interested parties as set forth below:

Nelson Pierre  
105 Lawrence Street #2  
Malden, MA 02148

Sorna Pierre, a/k/a Sorna Simon  
105 Lawrence Street #2  
Malden, MA 02148

Wells Fargo Bank, NA f/k/a  
World Savings Bank  
1901 Harrison Street  
Oakland, CA 94612

City of Malden  
Tax Collector  
Government Center  
200 Pleasant Street  
Malden, MA 02148

Wells Fargo Bank, N.A.  
f/k/a World Savings Bank  
P.O. Box 659558  
San Antonio, TX 78265

/s/ Ann Marie Maccarone

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Ann Marie Maccarone

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